

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY HARDNETT, A/K/A LARRY
HARDNETTY, A/K/A LARRY AOB,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69843

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Larry Hardnett appeals from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, two counts of first-degree kidnapping, and two counts of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Hardnett claims the district court abused its discretion by excluding testimony from his investigator regarding his co-defendant Marcus Burrell's Facebook account. We disagree.

At trial, one victim testified Burrell communicated with him through Burrell's Facebook account "Marcus N Da Cut" and the other victim identified Hardnett as Burrell's accomplice through photographs she later saw posted on that Facebook account. Hardnett sought to have his investigator testify to establish that the Facebook account "Jump Out Marley" was Burrell's account, it was the same as the "Marcus N Da Cut" account, and it did not have any photographs of Hardnett that matched the victim's description of Burrell's accomplice. The State objected, arguing the investigator's testimony was inadmissible because Burrell was not testifying and, without his testimony, there was no way to


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authenticate that the “Marcus N Da Cut” account was merely renamed and “Jump Out Marley” was the continuation of that account. The district court excluded the investigator’s testimony.

We conclude the district court did not abuse its discretion by excluding the investigator’s testimony. *See Rodriguez v. State*, 128 Nev. 155, 160, 273 P.3d 845, 848 (2012). The investigator’s testimony alone would not have established that the “Jump Out Marley” account was Burrell’s account, that it was a continuation of the “Marcus N Da Cut” account, or that it contained all images that had been posted on the “Marcus N Da Cut” account. Because the evidence could not be authenticated, it was irrelevant and inadmissible. *See* NRS 48.015; NRS 48.025(2); NRS 52.015(1) (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims.”); *Rodriguez*, 128 Nev. at 160, 273 P.3d at 848 (“Authentication represents a special aspect of relevancy, in that evidence cannot have a tendency to make the existence of a disputed fact more or less likely if the evidence is not that which its proponent claims.” (internal quotation marks, brackets, and ellipses omitted)). Accordingly, we conclude the district court did not err by excluding the investigator’s testimony, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Villani, District Judge
Law Offices of Carl E.G. Arnold
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk